

WORKPLACE HARASSMENT

YOUR RIGHTS AND RESPONSIBILITIES
OFFICE OF CIVIL RIGHTS & DIVERSITY



INTRODUCTION

This brochure is intended to educate Treasury employees about the prevention of harassment in the workplace.

Harassment is a matter of particular concern because it seriously damages the employee-employer relationship, demeans the individual subjected to such conduct, and destroys the overall morale of an organization. All of our employees deserve to work in an environment in which they are treated with **dignity** and **respect** and which supports the Department's commitment to being one of the best employers within the Federal government.



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WHAT IS THE DEPARTMENT'S ANTI-HARASSMENT POLICY?

The Department of the Treasury is committed to providing a work environment that is free from all harassment. Harassment that is based on a characteristic protected by law (national origin, race, color, gender, religion, age, disability, protected genetic information, or retaliation for prior protected EEO activity) or Executive Order (sexual orientation or identity and parental status) is illegal, disrespectful of an individual's rights, and damaging to all employees.

Employees are free to report any incident involving harassment without fear of reprisal. Management will take prompt and appropriate action whenever an allegation of harassment is brought to its attention, including the swift discipline of any employee who is responsible for violating the Department's policy.

Note: This brochure is an educational summary for Treasury personnel. It does not create or modify any existing Treasury policy or rule and does not create or modify any rights any person may have under applicable laws, regulations, and official policy.

WHAT IS HARASSMENT?

Many people think about harassment in terms of sexual harassment. But illegal harassment can be based on membership in any protected group. Harassment, whether or not sexual, includes unwelcome conduct (verbal, nonverbal or physical), that has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, offensive or hostile environment based on race, color, sex, national origin, religion, disability, age, protected EEO activity, protected genetic information, sexual orientation or parental status.

Harassment (including sexual harassment) is prohibited under Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act; Title II of the Genetic Information Non-Discrimination Act of 2008 (GINA); Executive Order 13087; and Executive Order 13152, as a form of discrimination.

The Equal Employment Opportunity Commission has established guidelines defining harassment as including: unwelcome intimidation, ridicule, insult, comments or physical conduct based on race, color, religion, sex (whether or not of a sexual nature), national origin, age, disability, sexual orientation, genetic information, or retaliation for prior EEO activity. Examples include:

- Making negative comments about an employee's personal religious beliefs, or trying to convert them to a certain religious ideology

- Using racist slang, phrases, or nicknames
- Making remarks about an individual's skin color or other ethnic traits
- Displaying racist drawings, or posters that might be offensive to a particular group
- Making offensive gestures
- Making offensive reference to an individual's mental or physical disability
- Sharing inappropriate images, videos, e-mails, letters, or notes of an offensive nature
- Offensively talking about negative racial, ethnic, or religious stereotypes
- Making derogatory age-related comments
- Wearing clothing that could be offensive to a particular ethnic group

There is no single situation that constitutes harassment. Rather, harassment may take many forms:

- The harassment may be direct or indirect.
- It may be a generalized offensive work environment that offends based on sex, race, color, national origin, religion, disability, age, protected EEO activity, protected genetic information, sexual orientation or parental status.
- The offender may be a supervisor, coworker or subordinate.

Management may also be responsible for the acts of outside contractors who harass employees in the workplace.

It is important to note that it is not how a person intended his or her actions to be taken, but rather how the actions are reasonably perceived.

In determining if conduct constitutes harassment, courts have considered how a “reasonable person” would perceive such conduct. Even if the harasser does not view his or her conduct as objectionable, a reasonable person might.

Depending on the severity of the conduct, an isolated incident, or even a few such incidents, usually will not be considered sufficient to establish a hostile working environment under the law. However, supervisors should take corrective action when such isolated incidents occur, in order to ensure that future conduct does not rise to the level of a hostile working environment.

Whatever form the harassment may take, it is important that it be recognized and that prompt and effective action be taken to end the harassment.

WHAT IS SEXUAL HARASSMENT?

Unwelcome advances, requests for favors, and other verbal or physical conduct of a sexual nature constitutes harassment when:

- 1 submission to such conduct is made either explicitly or implicitly a term or condition of employment;
- 2 submission to or rejection of such conduct by an individual is used as the basis of employment decisions affecting such individual; or
- 3 such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Such conduct may include:

- an employer or supervisor conditioning promotion, job assignments, or other tangible job benefits based on acquiescence to unwelcome sexual conduct, or penalizing an individual for refusing to participate in such conduct;
- sexist or stereotypical remarks about a person's clothing, body, appearance or activities;
- sexually oriented jokes, stories, remarks or discussions;
- descriptions of sexual acts;
- posting or displaying sexually graphic pictures anywhere in the workplace;

- deliberately touching, pinching, patting, or giving inappropriate looks to another person;
- pressure for dates or sexual activity;
- unwelcome telephone calls, e-mail messages, social network postings or letters of a sexual nature; or
- demands for sexual favors.

In sexual harassment, the harasser may be male or female, and the victim may be of the opposite sex or the same sex as the harasser.

Even a consensual relationship between the harasser and the victim may involve sexual harassment. For example, if the victim agrees to sexual behavior out of fear of retaliation, the conduct of the other party may still constitute sexual harassment despite the victim's consent. The focus is on whether the conduct was unwelcome, not consensual.

WHAT IS NOT HARASSMENT?

- A single or isolated event, such as a mere utterance of an epithet which offends another employee, typically does not rise to the level that sufficiently affects the conditions of employment. However, a single incident should not be ignored or allowed. Well-managed intervention in response to single incidents will help prevent the situation from escalating.
- Petty slights and trivial annoyances, such as a failure to be included with the group, a lack of good manners or a personality conflict.
- Reasonable management actions, such as workplace change or restructuring, directions to perform work, or to comport oneself appropriately.

HOW CAN I PREVENT HARASSMENT?

There are a number of ways that Treasury employees at all levels can help prevent harassment.

- The Department and the individual bureaus have issued policy statements against harassment. Management should have distributed these statements to all employees and posted them in prominent locations, including the internet. Make yourself and your coworkers aware of this policy.

- Management should ensure that the Department's "zero tolerance" policy has been distributed to and is understood by all employees. Supervisors should also make it clear that they will not tolerate any harassing behavior among their employees.
- Employees must make an effort to keep the workplace professional - avoid situations or discussions of a sexual nature, or those involving protected group characteristics. What you might find humorous, others might find offensive or disturbing.
- You are better off being overly cautious about comments made in the workplace, rather than taking chances. When in doubt, do not make the comment, joke, etc. It is up to every employee in the workplace to set boundaries of appropriate and inappropriate behavior. If you fear that your own behavior has been misunderstood, take the time to explain and apologize to your co-worker.
- If you suspect that you are the victim of harassment, take immediate action. If management is made aware of harassing conduct promptly, action can be quickly taken to prevent a recurrence of such conduct. If an offender is counseled or disciplined for harassing behavior, the behavior should cease and others will be discouraged from similar actions.
- If you are a supervisor or manager, and an employee informs you of objectionable behavior in the workplace, you must take immediate action:
 - You cannot ignore the situation or cover up the allegations, even if the victim asks you to do so. If you do, the agency may be liable for damages and ultimately you may be subject to disciplinary action.
 - You should talk to the individuals and find out all you can about the allegations.

- You should immediately take appropriate corrective action, which may include counseling or disciplinary action.
- Contact your EEO or Human Resources Office for assistance or guidance when handling a harassment situation.

WHAT OPTIONS ARE AVAILABLE IF I BELIEVE THAT I HAVE BEEN THE VICTIM OF HARASSMENT?

There are a number of steps which you may take in order to resolve a harassment problem in your workplace:

- If possible, speak with the individual directly if you are comfortable doing so, and inform him or her that you believe the behavior is inappropriate. Informal action such as this may be enough to put an end to the harassing behavior.
 - The Merit Systems Protection Board found that direct communication is the most effective means of stopping harassing behavior.
 - Document any such discussions you have with the individual and any further occurrences of harassing behavior.
 - If direct communication with the individual is not possible, or fails to stop the behavior, report the harassment to your supervisor.

- If your supervisor is the harasser, speak to the next level of management, or to the EEO or Human Resources Office.
- If this is a sexual harassment matter, and the above options do not resolve the problem, call your bureau's sexual harassment hotline number for reporting incidents of sexual harassment or contact an EEO counselor about filing an EEO complaint.

All Department of the Treasury bureaus have established hotline numbers for reporting incidents of sexual harassment. The website for these numbers is provided at the end of this brochure. You may call the hotline number for your bureau at any time to report an incident of sexual harassment, and need not identify yourself if you are concerned about the potential consequences. However, should you wish to pursue the formal complaint process, it will be necessary to identify yourself.

You can take any or all of the actions listed above. Remember that you should always first make it clear to the individual that you find the behavior unwelcome. That action often is enough to put an end to the harassing behavior.

HOW DO I FILE AN EEO COMPLAINT?

- You must contact an EEO counselor within 45 days of the last harassing incident. The names and telephone numbers of EEO counselors for your bureau should be posted in the building where you work.
- The EEO counselor will listen to your allegations and may talk to the other involved parties to try to reach an informal resolution of the problem.
- If you present a sexual harassment complaint, the EEO counselor will also offer you the opportunity to raise your allegations to the bureau head and the Office of the Inspector General (or TIGTA for IRS employees).
- If the matter is not resolved within 30 days, and the counseling period has not been voluntarily extended, the counselor will inform you of your right to file a formal complaint.
- A formal complaint must be filed with the Treasury Complaint Center within 15 days of receipt of written notice of your right to file a formal complaint. Your EEO counselor will provide you with the address of the Center.
- Once a formal complaint has been filed, a trained investigator will conduct an investigation into the complaint.

- When you receive the investigative file, you will be given the option of either a hearing before an Equal Employment Opportunity Commission(EEOC) Administrative Judge or a final agency decision based on the existing record.
- If you elect a hearing, one will be conducted by an EEOC Administrative Judge, unless the administrative judge determines a hearing is not necessary because there is no dispute about the facts of the claim.
- You will receive a final decision on your complaint. When you receive the final decision, you have the right to appeal to the EEOC Office of Federal Operations within 30 days or to file suit in federal court within 90 days of the decision.
- Remember, it is illegal for the agency to take any retaliatory action against you for filing a complaint of harassment.

WHAT WILL BE THE CONSEQUENCES OF AN ADMINISTRATIVE OR JUDICIAL FINDING OF HARASSMENT?

Where it is established that a supervisor's harassment resulted in a tangible employment action, such as downgrade or termination taken against an employee, the agency will be held liable; the agency will not have the opportunity to present an affirmative defense.

Where a hostile working environment is established, the agency will be held liable for the acts of a coworker or outside contractor only if the employer:

- knew or had reason to know of the acts committed; and
- failed to take prompt, effective action to remedy the situation.

Where a hostile working environment is established, the agency will be held liable for the acts of a supervisor unless the agency can show:

- the employer made a reasonable effort to prevent and correct promptly any harassing behavior; and
- the employee unreasonably failed to take advantage of preventive or corrective opportunities provided by the agency or otherwise avoid harm.

Upon an agency or EEOC finding of harassment, EEOC regulations require the following:

- notice to all employees in your workplace of their right to be free from discrimination and assurance that such discrimination will not recur; and

- corrective, curative, or preventive action be taken to ensure that harassment does not recur.

Pursuant to an administrative or judicial finding, the agency may also be required to reinstate annual or sick leave that you used as a result of the harassment, and provide you with any work benefits that you were denied as a result of the harassment, including any loss of earnings.

Under the Civil Rights Act of 1991, an individual who has been the victim of harassment may also be entitled to receive compensatory damages.

WHAT WILL HAPPEN TO A PERSON FOUND TO HAVE ENGAGED IN HARASSMENT?

The Department has made a commitment that harassing behavior will not be tolerated. Bureau heads will take swift and effective disciplinary action in cases where harassment has been committed.

Disciplinary actions will depend on the particular circumstances of each case. Discipline may include counseling, warnings, reprimands, suspension, transfer to a different post of duty, and termination.

Each employee should be aware that harassment in the workplace is not within the scope of their official duties and, if a private law suit is filed, the employee may not be defended by the government.

WHAT SHOULD I DO IF I AM ACCUSED OF HARASSMENT?

If a coworker or employee comes to you and accuses you of harassment, listen to what that person has to say. Make sure you try to fully understand what that employee is feeling and why he or she feels that the behavior was inappropriate. Apologize for your behavior, and tell the employee that you will try to make certain similar conduct does not occur in the future.

Appreciate that the employee has approached you first, and provided an opportunity to solve the problem informally. Once you have discussed the incident, keep your word. Be careful to ensure that the behavior does not happen again. If a formal complaint is filed, it may be an unpleasant experience for all involved, and may result in serious disciplinary action being taken against you if the allegations are found to be true.

If you think your behavior was acceptable, or that you are being falsely accused, approach your manager and explain the situation. It may be possible for the supervisor to arrange a discussion of the incident with both you and your accuser in order to clear up the problem.

Let others know if their behavior seems inappropriate. Do not encourage or permit offensive jokes or stories by your co-workers; rather, tell them that their behavior is offensive and should stop. Even if you do not participate, if you are a supervisor and do not object to such behavior, you are at fault.

If the coworker or employee goes to your supervisor regarding an incident, understand that the supervisor has a duty to follow up on the complaint. If he or she fails to do so, the agency may be held liable for failing to keep the workplace free of harassment.

All Treasury employees are expected to fully cooperate in the investigation of any EEO complaint. Failure to cooperate may result in disciplinary action.

CONCLUSION

Do not underestimate the seriousness of harassment. It is not to be tolerated in any workplace or under any circumstances. The only way to achieve a harassment-free environment is for all employees to be informed and take immediate action if they become aware of harassing behavior.

DEPARTMENT OF THE TREASURY SEXUAL HARASSMENT PREVENTION HOTLINE NUMBERS ARE AVAILABLE ON THE WEB:

A complete list of the bureau Sexual Harassment Hotline telephone numbers can be found on the Office of Civil Rights and Diversity's website located at:
<http://thegreen.treas.gov/offices/Pages/ocrd.aspx>
under Policies and Resources (Sexual Harassment Contacts).

